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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,885

08/21/2003

Paul Roland Bergquist

J6819(C)

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03/28/2006

EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

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ART UNIT

PAPER NUMBER

1771

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,885

Applicant(s)

BERGQUIST ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-22 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 7-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed January 13, 2006 have been fully considered but they are not persuasive.

a. Applicants traverse the 35 USC 112, first paragraph rejection of claim 1, 3-4 and 7-18 in which the term "synthetic fibers" is considered to be new matter by the Examiner. Applicants argue that those of skill in the art well understand that polypropylene is representative of synthetic fibers, and further that those skilled in the art equate polypropylene as a synthetic fiber and that the generic term is implied into the specific fiber example. Applicants further refer to their specification at page 8, paragraph [0022], which lists a series of patent publications, which are "all herein incorporated by reference" and argue that these explicitly disclose "synthetic" fibers and identify polypropylene as a representative one.

As stated in the previous office action, the alleged support for the term "synthetic fibers" is not proper since Applicants are trying to claim a broader term than what is supported by the Specification. The Specification provides support for polypropylene fibers, but not support for the numerous materials encompassed by the term synthetic. There is no question that a polypropylene fiber is a synthetic fiber, but the disclosure does not provide support for the use of every single species encompassed in the broad term "synthetic fibers" as claimed. With regards to the patent publications incorporated by reference in the Specification, it is noted that these references are incorporated to show methods on how textiles are impregnated or coated with lathering surfactants or skin conditioners and not to particularly provide support for the use of any synthetic fiber.

Therefore, the rejection of the claims as containing new matter is maintained herein.

b. With regards to the prior art of SUSKIND, applied by the Examiner as a primary reference in the rejection of the claims, Applicants argue that the reference focus upon a textile containing wood pulp versus the presently claimed invention in which there is no wood pulp problem that is being solved nor is wood pulp incorporated into this textile.

It is first noted that the present invention has a central area surrounded on both sides by areas formed of fibers consisting of synthetic fibers. The invention as claimed in the independent claims does not limit the central area to consist of synthetic fibers, just the areas surrounding the central area. It is noted that the web of SUSKIND et al. provides a fabric produced by hydroentangling and their invention is also applicable in the construction of wipes. (Refer to Col. 1, lines 39-41) The Examiner has relied on the structure of SUSKIND et al. as it provides the presently claimed central area sandwiched between two other areas of higher basis weight. While SUSKIND et al. provides a similar structure, it fails to use fibers consisting of "synthetic fibers" in the areas of higher basis weight and instead used a blend of synthetic and pulp fibers in those areas.

The Examiner relies on the teachings of BOUCHETTE that also discloses a hydroentangled web, useful in the manufacture of wet wipes and industrial wipes, that uses polypropylene fibers in the top and bottom plies of their structure. The Examiner finds that such combination is proper as both references are directed to hydroentangled fabrics useful in the field of disposable medical applications and the use of synthetic fibers such as polypropylene fibers in the top and bottom area of the structure of SUSKIND et al. instead of using a blend of synthetic fibers and pulp would have been

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obvious at the time the invention was made to a person having ordinary skill in the art with the motivation of maximize the desirable and hand feel associated with synthetic compared to wood pulp materials. It is further noted that the BOUCHETTE reference also teaches the use of synthetic fibers in the middle layer; therefore, such modification would have been recognized by one having ordinary skill in the art as an alternative to the use of pulp material in the middle layer. Applicants' arguments indicating that BOUCHETTE does not show such embodiments in the examples and focused more on pulp have been considered but are not persuasive as the broader teachings of the reference do teach that such modification is an alternative modification.

c. With regards to the claimed Air Permeability, it is noted that the prior art of record provides the structural limitations of the claimed invention and such property would be inherent to the structure of the prior art as the web formed from the combination of SUSKIND et al. and BOUCHETTE is similar to the present invention (i.e. It is made by hydroentanglement and has areas of low and high basis weight and uses similar fiber materials). Further, it is noted that air permeability can be manipulated in the art of hydroentangled fabrics by manipulating the hydroentanglement conditions.

d. Claims 17 and 18 have been amended to require that the area of low basis weight consist of fibers selected from the group consisting of polyethylene terephthalate, polypropylene, polyamide, and polyethylene and fiber combinations thereof.

It is noted herein that the secondary reference of BOUCHETTE et al. teaches the use of polyolefins, polyethylenes, polypropylenes, polyesters, polyamides, among other suitable synthetic fibers. (Refer to Col. 4, lines 17-20) The Examiner interprets such

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teaching as encompassing synthetic fibers in the upper and bottom areas, as well as the middle layer with short synthetic fibers.

e. New claims 19-22 have been considered and rejected over the prior art as stated below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 3-4, 7-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As explained above, the Specification provides support for polypropylene fibers and not for "synthetic fibers". (Refer to page 7, paragraph [0017] of the Specification).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1, 3-4, 13-15, 17 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. (US 4,808,467) which is an equivalent to EP 0308320 A in view of BOUCHETTE (US 6,110,848).

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SUSKIND et al. discloses a fabric produced by hydro entangling a web with a basis weight of 0.3 ounce per square yard of continuous nylon filaments between two 0.9 oz/sq. yd. wet laid webs of pulp and polyethylene terephthalate. (Refer to Example 4, Column 7, lines 14-35). It is further noted that the SUSKIND et al. reference further teaches that the basis weight of the base web (central area) is in the range of 0.15 to 0.8 ounce per square yard. (Refer to Col. 3, lines 3-6) Those range with the values disclosed in the examples for the wet laid webs meet the presently claimed ratio ranges from 4:1 to 2:1. It is noted that the reference teaches using the material as absorbent materials. (Col. 1, lines 48-68).

SUSKIND fails to teach the use of fibers consisting of “synthetic fibers” in the areas of higher basis weight.

BOUCHETTE discloses a three-ply sandwich structured hydroentangled web in which the top and bottom plies comprise synthetic fibers and the middle ply comprises cellulosic fibers. The middle layer cellulosic fiber can optimally be wholly or partially replaced with synthetic fibers. The hydro entangled webs of the reference are useful in the manufacture of towels, wet wipes, industrial wipes and medical gowns. (Abstract) Among the suitable synthetic fibers disclosed by the reference are polyolefins, polyethylenes, polypropylenes, polyesters, and polyamides, among others. (Col. 4, lines 17-18)

Since both references are directed to hydro entangled fabrics useful in the field of disposable medical applications, the purpose disclosed by BOUCHETTE would have been recognized in the pertinent art of SUSKIND.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the areas of higher basis weight of SUSKIND which form the

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outside surfaces of the material and substitute the wood pulp material with synthetic fibers with the motivation of maximize the desirable hand feel associated with synthetics compared to wood pulp as disclosed by BOUCHETTE. (Col. 2, lines 59-62).

Although SUSKIND et al. and BOUCHETTE does not explicitly teach the claimed Air Permeability it is reasonable to presume that this property is inherent to textile formed from the combination of SUSKIND et al. and BOUCHETTE. Support for said presumption is found in the use of like materials (i.e. hydro entangled structure made with similar materials). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of Air Permeability from 300 to 1000 would obviously have been present one the product of SUSKIND et al. in combination with BOUCHETTE is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

It is further noted that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the permeability of the fabric and provide with a higher permeability with the motivation of producing a material with a higher degree of absorption capacity as shown by SUSKIND. (Refer to properties of materials in examples)

6. Claims 7-9, 12, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. and BOUCHETTE as applied above, and further in view of WAGNER et al. (US 5,951,991).

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While SUSKIND et al. discloses the structure of the nonwoven hydro entangled textile, it fails to teach the use of a cleansing composition comprising a lathering surfactant as claimed herein.

WAGNER et al. relates to a substantially dry, disposable, personal cleansing product. The reference teaches the use of apertured hydro entangled substrates. (Refer to Col. 7, lines 33-col. 8, lines 17) The reference teaches the use of from about 0.5% to about 40% lathering surfactant based on the weight of the substrate. (Col. 8, lines 45-49) The reference further teaches the use of a conditioning emulsion comprising from about 0.25% to about 1505 of the substrate. (Col. 14, lines 2-24)

Since the references are directed to high strength hydroentangled materials, the purpose disclosed by WAGNER et al. would have been recognized in the pertinent art of SUSKIND et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the substrate of SUSKIND et al. and provide with a cleansing composition with lathering surfactant with the motivation of producing a personal cleansing product as disclosed by WAGNER. (Col. 1, lines 15-39)

7. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al., BOUCHETTE and WAGNER as applied to claim 7 above, and further in view of BERGQUIST (US 6,723,330 B2).

While WAGNER teaches a substantially dry, disposable, personal cleansing product, it fails to teach the use of effervescent ingredients that would produce foam upon contact with water.

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BERGQUIST teaches an article for cleansing body surfaces that includes an effervescent cleansing composition capable of generating foam upon contact with water. (Abstract) The reference teaches the use of sodium bicarbonate and citric acid. (Col. 2, lines 37-39)

Since this reference is also directed to a substantially dry cleansing composition, the purpose disclosed by BERGQUIST would have been recognized in the pertinent art of WAGNER.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the cleansing composition and provide it with the effervescent composition with the motivation of generating a foam upon contact with water without the need to mechanically treat the material to produce the foam.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

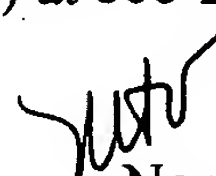
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez
Primary Examiner
Art Unit 1771

March 21, 2006